



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Ms. Emma Best
MuckRock News
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Somerville, MA 02144-2516
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Re: Appeal No. DOJ-AP-2019-000729
Request No. 1409855
SRO:JNW

VIA: Email

Dear Ms. Best:

You appealed from the action of the Federal Bureau of Investigation on your Freedom of Information Act request for access to records concerning Robert M. Higdon. I note that your appeal concerns the adequacy of the FBI's search. Please note that this Office was closed due to a lapse in funding appropriations between December 22, 2018 and January 25, 2019, which resulted in a delay in responding to your appeal.

After carefully considering your appeal, I am affirming the FBI's action on your request. The FBI informed you that it could locate no responsive main file records subject to the FOIA in its files. I have determined that the FBI's response was correct and that it conducted an adequate, reasonable search for records responsive to your request.

I note that in your appeal, you mention that you are seeking cross-reference records. Please be advised that you need to provide information sufficient to enable the FBI to determine with certainty that any cross-references it locates are identifiable to the subject of your request. This information may include the following:

- 1) the specific circumstances in which the subject of your request had contact with the FBI;
- 2) the date(s) of such contact;
- 3) the location(s) of such contact;
- 4) the full name (first, middle, and last) as well as any prior names or aliases used by the subject of your request;
- 5) Social Security number, date of birth, place of birth, and home address of the subject of your request;
- 6) names of associates of the subject of your request the mention of whom might aid in the identification of responsive records; and
- 7) other references to the subject of your request in media, such as books, articles, websites, etc.

You should provide this information to the FBI directly. While the FBI will make every effort to identify responsive cross references using any additional information that you provide, please note that the FBI may not be able to successfully identify such records even with additional information. You may appeal any future adverse determination made by the FBI.

To the extent that your request seeks access to records that would either confirm or deny an individual's placement on any government watch list, the FBI properly refused to confirm or deny the existence of any such records because their existence is protected from disclosure pursuant to 5 U.S.C. § 552(b)(7)(E). Exemption 7(E) concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures or guidelines for law enforcement investigations or prosecutions. Further, it is reasonably foreseeable that confirming or denying an individual's placement on any government watch list would harm the interests protected by this exemption. See, e.g., Kalu v. IRS, 159 F. Supp. 3d 16, 23 (D.D.C. 2016). This response should not be taken as an indication that records do or do not exist. Rather, this is the standard response made by the FBI.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the FBI in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

2/12/2019

A handwritten signature in blue ink, appearing to read "Sean R. O'Neill". The signature is written in a cursive style with a blue ink pen.

Sean R. O'Neill
Chief, Administrative Appeals Staff
Signed by: SEAN O'NEILL